



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TURLUYEVA v. RUSSIA

(Application no. 63638/09)

JUDGMENT

STRASBOURG

20 June 2013

FINAL

07/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Turluyeva v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 63638/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Raisa Turluyeva (“the applicant”), on 2 December 2009.

2. The applicant was represented by lawyers of the NGO EHRAC/Memorial Human Rights Centre. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her son had been unlawfully detained in Chechnya in October 2009 and then disappeared.

4. On 2 March 2010 the President of the First Section, acting upon the applicant’s request, granted priority treatment to the case under Rule 41 of the Rules of Court. At the same time he decided not to indicate to the Russian Government, under Rule 39 of the Rules of Court, measures sought by the applicant.

5. On 1 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in Goyty, Urus-Martan District, Chechnya.

A. Abduction of the applicant's son

1. Background information

7. The applicant is a widow, whose husband died in 1994. She lived with her son, Sayd-Salekh Ibragimov, born in 1990, who at the relevant time was in his second year of studies at the Grozny Oil Institute. The applicant also has a daughter. The family lived in the village of Goyty, Urus-Martan District, Chechnya. Their household at 117 Gonchayeva (previously Sovetskaya) Street consisted of three houses sharing a common courtyard. One house belonged to the applicant and her children, and the other two to her husband's brothers. According to the applicant, one of them had left Chechnya with his family and in 2009 that house was uninhabited.

2. Events of 21 October 2009

8. On 21 October 2009 the applicant was in Grozny. At about midday on that day she received a phone call from a relative, who told her that a special operation was taking place at their household and that soldiers were going to burn the house down. The applicant called her son, who was in Grozny, and told him not to come home but to stay at his uncle's place.

9. In the meantime, the applicant and her brother-in-law Adnan I. went to Goyty by car. As soon as they arrived the car was surrounded by armed men in military uniforms, who they understood to be servicemen of the Ministry of the Interior. The servicemen showed them a body and told them that this man had been hiding in their household since the previous day, in the attic of Adnan I.'s house. The body was that of a young man, aged 17-19, with long hair. His shirt was pulled up to the neck and his hands were raised behind the head; there was one wound in the heart area. Adnan I. then went to see his paralysed mother, who had been taken to the neighbours.

10. Police officers then took the applicant and her brother-in-law to the Urus-Martan district department of the interior ("the ROVD") and questioned them. Both denied all knowledge of fighters' presence in the attic of a house situated in their household.

11. The applicant and her brother-in-law were released at about 9 p.m. that day. They returned to Goyty and found that their houses had been burned down. Firefighters told them that the houses had been set on fire deliberately. Then the applicant's brother-in-law returned to Grozny.

12. Adnan I.'s daughter M. later told her father that Sayd-Salekh Ibragimov had come to their home in Grozny at about 3 p.m. that day. Soon afterwards he had called a taxi and left, heading towards the city centre. M. told her father that a group of armed men had arrived at their house almost as soon as the applicant's son had left and demanded that she tell them where he had gone or take them there. As M. did not know where he had gone, they left.

13. At about 10 p.m. on the same day Adnan I. received a call from the head of the Urus-Martan ROVD, who requested that he return to that office. When he arrived there three soldiers took him to Grozny in their car. He was taken to the office of Mr Sherip Delimkhanov, head of the external guards regiment of the Ministry of the Interior of Chechnya (*полк милиции Управления Вневедомственной охраны МВД Чечни*), also known as the "oil regiment", as one of their main tasks was to secure oil pipes and installations.

14. Adnan I. was taken into a room where there were about a dozen members of the police force who had participated in the operation in Goyty earlier that day. They told Adnan I. that two police officers had been wounded and one had been killed. Adnan I. denied that any members of illegal groups had ever lived in their household, and stressed that the house in question was uninhabited. He was given to understand that the "blood feud" for the police officer who had been killed would fall on him and his family.

15. After about twenty minutes another soldier brought Sayd-Salekh Ibragimov into the room. Adnan I. saw signs of beatings on his nephew's face: his right cheek was discoloured, there was blood in the right corner of his mouth and nose, and he had difficulty standing up without assistance. He also remarked that his nephew was shaking, looked frightened and spoke fast, without looking at anyone. The policemen told them that Sayd-Salekh Ibragimov could save his life by cooperating; otherwise they would kill him in retribution for the death of their colleague. Adnan I. was allowed to talk to his nephew. The latter admitted that he had maintained contacts with members of illegal armed groups through the Internet and his mobile phone and promised that he would cooperate with the police. Adnan I. pleaded with him to do anything to save his life.

16. Soon after midnight Adnan I. and his son Magomed, who had also been brought to the regiment's headquarters, were released. The family had no news of Sayd-Salekh Ibragimov after that date.

17. In support of her submissions the applicant presented written statements drawn up by her and by her brother-in-law, Adnan I., in December 2009 and July 2011.

18. The special operation in Goyty on 21 October 2009 was officially reported by the Ministry of the Interior of Chechnya as follows:

“21 October 2009

Policeman killed saving elderly woman

Two illegal fighters were killed in Goyty in the Urus-Martan district as a result of a special operation.

“‘The operation aimed at locating and exterminating members of illegal armed groups has just been completed. It took place in Sovetskaya Street, where members of illegal armed groups had been spotted in one of the houses,’ stated the Chechnya Minister of the Interior Mr Ruslan Alkhanov.

One of the fighters was identified as Abdul Dzhumayev from Shatoy district. The Minister also said that a member of the police force had been killed while saving an elderly woman from a house seized by terrorists there. ‘Unfortunately, one of our comrades died. He was a member of the external guards’ regiment of the Ministry of the Interior of Chechnya. Two other policemen were wounded,’ said Mr Alkhanov. He stressed that the officers had received injuries while trying to save the life of an 80-year-old woman. They evacuated her through the window and were shot at by the bandits. One police officer lost his life. The operation was carried out by the Sever (Northern) regiment of the internal troops of the Ministry of the Interior, the Special Police Force (“the OMON”) and the external guards regiment of the Ministry of the Interior of Chechnya under the command of Lieutenant-Colonel of the Ministry of the Interior Sherip Delimkhanov.”

19. The Government, in a memorandum of 26 January 2011, acknowledged the basic facts as submitted by the applicant. They confirmed that a special operation had been carried out in Goyty, in Sovetskaya Street, on 21 October 2009, during which one soldier of the external guards regiment had been killed and two others wounded. Two members of illegal armed groups had been killed and a third had escaped. As a result of this conflict, the houses at 117 Sovetskaya Street had burned down. In connection with this incident, at about midnight on 21 October 2009 the servicemen of the external guards regiment had taken Sayd-Salekh Ibragimov to the regiment’s headquarters in Grozny. He had an oral exchange about these events in room 13 of the building and was released at about 12.30 a.m. on 22 October 2009.

B. The official investigation of the abduction

1. Initial proceedings

20. In the days immediately following 21 October 2009 the applicant expected to be informed about the whereabouts of her son, and did not apply to any authorities. On 1 November 2009 she and her brother-in-law Adnan I. were called to the office of the Achkhoy-Martan District Prosecutor. The applicant submitted that the investigator had asked them about the events of 21 October 2009. However, the investigator had refused to note Adnan I.'s statements about the meeting at Mr Delimkhanov's office. According to the applicant, the investigator told them that if they wanted to pursue complaints against the "oil regiment", they would be forced to change their statements. The applicant and Adnan I. did not insist on noting their statements.

21. The applicant submitted that she continued to seek information about her son from various officials.

22. On 2 December 2009 she submitted a complaint to the Investigating Committee at the Prosecutor's Office in the Achkhoy-Martan district (hereinafter "the district investigating committee"). She described the events of 21 October 2009 and asked to be informed about the whereabouts of her son. She also asked for him to be allowed to meet with a lawyer and to be given medical assistance if needed.

23. Upon this written application, the district investigating committee initiated a check, under Articles 144-45 of the Criminal Procedural Code. By 8 December 2009 the investigator in charge of the case had collected personal information about Sayd-Salekh Ibragimov from the local village administration, and requested all the district and regional police and investigating departments in Chechnya to check whether they had any information about the young man. The letters mentioned that on 21 October 2009 he had been delivered by unidentified police officers to the headquarters of the external guards' regiment of the Ministry of the Interior of Chechnya and that there had been no news of him after that.

24. On 9 December 2009 an investigator took a statement from Adnan I. The latter explained that he had come to Goyty on 21 October 2009 at the applicant's request; that he had seen a large group of Ministry of the Interior soldiers and the body of a young man with long hair; that his paralysed mother had been taken to the neighbours; that he and the applicant had been taken to the Urus-Martan ROVD for questioning; that they had been released on the same day and had seen their houses in Goyty burned down; that he had been called late at night to return to the Urus-Martan ROVD and that from there he had been brought back to Grozny, to the "oil regiment" headquarters in Mayakovskaya Street. The witness then went on to describe in detail the interior of the building and the office where he had been

questioned, and where he had last seen Sayd-Salekh Ibragimov. He recognised Mr Delimkhanov among the soldiers. He also stated that his nephew had been questioned by a soldier called Valid, who had earlier told him that he was the commander of the sixth platoon of the regiment and was a native of Goyty. Valid showed a mobile phone to Sayd-Salekh and showed him something on the phone, asking whether he knew these people, to which Sayd-Salekh gave a positive answer. Valid told Sayd-Salekh that they had been following him for about a month. He also asked him where he had met these people, to which the Adnan I.'s nephew responded "In a chat room". Adnan I. stressed that his nephew had looked scared and had signs of beatings on his face. The nephew also stated that the police officers had told him that they would pursue him for the death of their colleague and that he felt threatened and had asked for protection. Adnan I. had not seen his nephew after that.

25. On 10 December 2009 the investigator took a statement from the applicant. She gave similar statements about the events of 21 October 2009; she also stated that the house where she lived had burnt down and she and her family (herself, her daughter and her son) had lost their property, including gold jewellery, and documents. The applicant submitted that she had had no news of her son since 21 October 2009, and gave the police two GSM phone numbers used by her son.

26. On 10 December 2009 the same investigator wrote down explanations submitted by Ms Aminat O., Sayd-Salekh's girlfriend, who lived with him at his house. She was an eyewitness to the events of 21 October 2009. She stated that at about 2 p.m. a group of armed servicemen had arrived at their house and searched part of the household. There was an exchange of fire in the courtyard and she had asked police officers who were there to take "granny" out of the house, which they did, bringing her out through the window on a mattress. She thought that the house had been set on fire by the police officers. She had not seen Sayd-Salekh Ibragimov after 21 October 2009 and had no news of his whereabouts.

27. On 11 December 2009 the investigator of the Achkhoy-Martan district investigating committee asked the ROVD to take action to find out Sayd-Salekh's whereabouts, in particular to obtain information from the GSM operator about his movements and calls received since 1 September 2009 and to find and question the driver of the bus which took the students of the Grozny Oil Institute to and from classes.

28. Between 11 and 12 December 2009 the investigator sought information about Sayd-Salekh Ibragimov from the management of the Grozny Oil Institute, from the Public Health department of Chechnya, from the Chechnya Prison Department, and from a number of other law-enforcement bodies. In particular, on 12 December 2009 the investigator requested the commander of the external guards regiment to

identify and send for questioning the servicemen who had been on duty on the night of 21 to 22 October 2009 and to send a copy of the regiment's registration log to the district investigating committee.

29. On 15 December 2009 the Grozny Oil Institute informed the investigator that Sayd-Salekh Ibragimov had not attended classes since 19 October 2009. One of his classmates and a professor confirmed that they had not seen him at the Institute since 19 October 2009; a copy of the class record was acquired.

30. On 15 December 2009 the investigator, together with Adnan I. and the applicant's representative from NGO Committee Against Torture, inspected the headquarters of the "oil regiment" in Grozny. Adnan I. showed the office where he had last seen his nephew, at about midnight on 21 October 2009, and specified that about a dozen police officers had been there at the time, including Mr Sherip Delimkhanov.

31. On 17 December 2009 the district investigating committee ruled that criminal proceedings would not be opened. It concluded that there was no reason to suspect that murder had been committed, and that therefore there was no evidence of a crime. On the same day the applicant's representative was forwarded a copy of the decision and informed of the appeal procedure.

2. Opening of the criminal investigation

32. It appears that the applicant complained about the above decision. As a result, the documents collected during the investigation were sent to the Leninsky district investigating committee in Grozny, the location of the headquarters of the "oil regiment". On 28 December 2009 that office opened criminal investigation file 66102 in respect of a suspected murder (Article 105 of the Criminal Code). The document considered it established that on 21 October 2009 Sayd-Salekh Ibragimov had been taken to the headquarters of the regiment by unidentified servicemen of the Ministry of the Interior. There he was questioned orally in room 13 about the incident which had occurred earlier that day in Goyty. Sayd-Salekh Ibragimov was released and left the premises of the regiment at about 12.30 a.m. on 22 October 2009. His whereabouts remained unknown. On the same day the applicant was informed about this development.

33. On 15 January 2010 the investigator responsible for the case drew up a detailed plan of the necessary actions which should be taken.

34. On 2 February 2010 the applicant was granted the status of victim in the proceedings.

3. Statements by the applicant, Adnan I. and others

35. On 2 and 10 February 2010 the applicant was questioned as a victim of the crime. On the same day Aminat O. was questioned. They reiterated

their previous statements and stated that their jewellery had disappeared after the special operation.

36. On 24 March 2010 Adnan I. was questioned as a witness. He gave detailed submissions about the events of 21 October 2009, in line with his statement of 9 December 2009 (see paragraph 24 above). He described in detail the encounter with Sherip Delimkhanov, Valid A. and about fifteen servicemen of the regiment at its headquarters on the night of 22 October 2009. The witness stressed that the police officers had referred to a blood feud which would now fall on his family, in retribution for the death of their colleague in his house. He then described how Valid A. had led Sayd-Salekh into and out of the room by holding him by the neck from behind and forcing him to bend forward. The witness described the signs of beatings and blood on his nephew's face, the fact that he was frightened and was shaking, and that he spoke fast and without looking at anyone. His nephew had admitted that he had maintained contacts with illegal fighters by "Internet chat". After that admission Mr Delimkhanov had said that "we shall kill this dog and avenge our colleague", but that he could be spared if he cooperated. Adnan I. then pleaded with Sayd-Salekh to do so to save his life. His nephew said that he could establish contact with illegal fighters on the Internet, but only during the daytime. After that, at about 12.30 a.m. on 22 October 2009, the witness was released from the regiment headquarters and returned home. He had not seen his nephew after that.

37. Adnan I. described the threats directed at him and his son Magomed. He stated that in early December [2009] he had been invited, under threat, to talk to Mr Delimkhanov, who had told him that he had two days to prove that he had seen Sayd-Salekh at Mr Delimkhanov's office. Then, at about 6.45 a.m. on 29 December 2009, a group of about fifteen armed men wearing black uniforms and masks burst into his house looking for his son Magomed. After that Magomed I. left Russia, and the witness was not prepared to disclose his place of residence, out of fear for his life.

4. Information about the detention and questioning of Sayd-Salekh Ibragimov received from the police

38. At some point the investigation found out that the headquarters of the "oil regiment" was equipped with CCTV cameras, but that their contents were erased within ten days.

39. In September 2010 the investigation sought to establish a complete list of servicemen from various security and police detachments who had taken part in the operation on 21 October 2009.

40. On various dates during 2010 the investigators questioned a number of police officers from the external guards regiment and from the Urus-Martan ROVD who had taken part in the special operation in question and who had been present at the offices when the applicant and her relatives had been there.

41. The servicemen from the Urus-Martan ROVD confirmed that they had taken part in the operation, and also that two suspects had been killed and that there had been police casualties. They also confirmed that the applicant's house had been burned down. They were not aware that the applicant and her brother-in-law had been questioned at the ROVD.

42. Mr Delimkhanov was questioned as a witness on 23 June 2010. He confirmed that after the operation of 21 October 2009 he had orally instructed his subordinates to bring Sayd-Salekh Ibragimov, his uncle and cousin to the regiment's headquarters. During a conversation Sayd-Salekh Ibragimov had confirmed that he had information about members of illegal armed groups, and promised to cooperate. He also promised to return in order to submit further information. He and his relatives had then left the regiment's headquarters. Since that date neither Sayd-Salekh Ibragimov nor his relatives had been to the regiment's headquarters.

43. Another serviceman of the regiment, Valid A., on 23 June 2010 gave similar statements about the three men being brought to the regiment headquarters at about midnight on 21 October 2009, the ensuing discussion and the fact that they had left the premises.

44. Several other servicemen of the external guards regiment were also questioned. Some of them denied any knowledge that Sayd-Salekh Ibragimov or his relatives had been to the regiment's headquarters in the evening of 21 October 2009. However, one serviceman, Shamsudy A., who had been on duty on the night in question, stated on 18 December 2009 and again on 4 March 2010, that Sayd-Salekh "had come to see the commander of the regiment". Soon afterwards, two other men – Adnan I. and his son Magomed I. – also arrived to meet Mr Delimkhanov. About thirty minutes later the three men had left. No records were made of their visit or questioning. Another serviceman of the regiment, Usman D., stated on 18 December 2009, referring to Shamsudy A., that Sayd-Salekh and his relatives "have been invited to see Sherip Delimkhanov at about 11 p.m. on 21 October 2009".

45. It appears from the exchange of letters between the Investigating Committee and the Ministry of the Interior that the investigation on several occasions tried to secure further participation of Mr Delimkhanov and two other high-ranking servicemen of the Ministry in the investigation, by means such as questioning and confrontation with other witnesses. On 28 September 2010 the investigator in charge of the case wrote a report to his superior, the head of the second serious crimes department of the Chechnya Investigating Committee. He described his attempts to obtain a confrontation between Adnan I. and Mr Delimkhanov. The investigator wrote that he had finally been invited to Mr Delimkhanov's office, where the latter first refused to participate in the confrontation due to his heavy workload, and then insisted that the confrontation should take place immediately and in his office. The investigator's attempts to arrange for a

confrontation within a reasonable time and on the premises of the Investigating Committee have been unsuccessful.

46. From the subsequent documents it follows that on 4 October 2010 the investigator terminated his work with the Investigating Committee and the file was transferred to another investigator.

5. Investigation of the events of 21 October 2009

47. At 4.30 p.m. on 21 October 2009 investigators of the Achkhoy-Martan district department of the investigating committee examined the buildings at 117 Gonchayeva Street. They described two male bodies, two machine guns, two improvised explosive devices, and a number of new and empty ammunition cartridges. They also noted the effects of fire in the houses and outbuildings. Both bodies bore gunshot wounds. An additional inspection of the site took place on 22 October 2009.

48. On 19 December 2009 the Achkhoy-Martan district department of the investigating committee opened a separate criminal investigation of the events of 21 October 2009, on suspicion of violence directed at state officials, membership of an illegal armed group, wilful damage to property and unlawful handling of arms and explosives. A number of police officers who had taken part in the operation were questioned. Firefighters who had attended the scene were also questioned. It does not appear that the cause of the fire at the applicant's address has been established.

49. It appears that this investigation, directed at unknown persons, is still pending.

6. The latest developments

50. In response to the Court's request, the Government submitted a complete copy of the criminal investigation file no. 66102 (five volumes, over 1,100 pages). The investigation was adjourned on one occasion and reopened. In the latest documents the investigator summarised the findings as follows (the passage quoted below is taken from the decision of 6 September 2010 to extend the term for investigation):

"On 21 October 2009 a special operation aimed at discovering members of illegal armed groups was carried out at 117 Gonchayeva Street. The operation was carried out jointly by servicemen from [five different units of the Ministry of the Interior of Chechnya, including the external guards regiment], [the Argun Town Department of the Federal Security Service (FSB)] and servicemen of the Urus-Martan ROVD. In the course of the operation unidentified servicemen of the Urus-Martan ROVD detained [the applicant] and [Adnan I.]. At about midnight on 21 October 2009 Sayd-Salekh Ibragimov arrived voluntarily at the headquarters of the [external guards regiment] situated in Grozny at the following address ... where he was orally questioned in room 13 about the incident which had taken place on 21 October 2009 ... At about 12.30 a.m. on 22 October 2009 S.-S. Ibragimov left the headquarters of the [regiment] and his whereabouts remain unknown".

51. In addition to the measures described above, the investigation has sent out dozens of requests to various law-enforcement bodies, detention centres, hospitals and travel agencies, but has not received any additional relevant information about the whereabouts of Sayd-Salekh Ibragimov.

52. It appears that by the end of 2010 the investigation was still pending, without any tangible results as to the fate of the applicant's son. No-one has been charged with any crime.

C. Complaint of harassment

53. The applicant submitted that on 14 December 2009 Adnan I. had been invited to meet with the commander of the "oil regiment", Mr Sherip Delimkhanov. Adnan I. and his representative went to Mr Delimkhanov's home, situated next to the regiment's headquarters. Adnan I. claimed that he had covertly made an audio recording of the conversation, which was partly in Chechen and partly in Russian; a copy of that recording has been submitted to the Court by the applicant. According to the applicant, Mr Delimkhanov told Adnan I. that as the oldest man in the house he was to be held responsible for what had happened there. Accordingly, the blood feud resulting from the death of the policeman should fall on him. Mr Delimkhanov alleged that he had protected Adnan I. from revenge attacks by other servicemen, but now since he had accused Mr Delimkhanov of the torture and murder of his nephew, he would no longer do so. Mr Delimkhanov also stated that he could obtain plenty of statements which would show that Sayd-Salekh Ibragimov was released from the headquarters of the regiment. He suggested that Sayd-Salekh had "gone to the forest" to fight, and that his family had staged the story of kidnapping.

54. The applicant submitted further that on 29 December 2009 a group of armed men had burst into Adnan I.'s house and searched it, without presenting any documents or identifying themselves. The applicant submitted that her brother-in-law had complained to the prosecutors' office about this incident, but did not present any documents.

55. On 7 February 2010 three lawyers of the Committee Against Torture NGO involved in representing the applicant and other individuals complaining of human rights violations in Chechnya were detained overnight by officers of the Shali District Department of the Interior. On 10 February 2010 the Committee issued a public statement denouncing the detention as unlawful, and referred to previous instances of pressure on the applicant and her relative.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

56. Articles 20, 21 and 20 of the Constitution provide that everyone has the right to life and the right to liberty and personal security, which are guaranteed and protected by the State. No one shall be subjected to cruel or degrading treatment or punishment.

57. Articles 45 and 46 of the Constitution guarantee judicial protection of rights under the Constitution.

58. Articles 52 and 53 of the Constitution protect the rights of victims of crimes. The State guarantees victims access to justice and compensation for damage. Everyone is entitled to compensation for damage caused by unlawful actions of State officials.

B. Russian Criminal Code

59. Articles 126 and 127 of the Russian Criminal Code stipulate that kidnapping and unlawful deprivation of liberty, respectively, are crimes punishable by up to fifteen and eight years of imprisonment respectively. Article 105 provides that murder is punishable by six to fifteen years' imprisonment. Aggravated murder, for example if committed by an organised group, is punishable by prison terms, including life imprisonment, and by the death penalty.

C. Russian Code of Criminal Procedure

60. Articles 21 and 22 of the Code provide as follows:

Article 21. Obligation to prosecute

“1. Public prosecution in criminal cases ... shall be carried out on behalf of the State by a prosecutor, an investigator or an inquiry officer.

2. In every instance in which evidence of a crime is observed, the prosecutor, investigator, inquiry agency, or inquiry officer shall take the actions specified by this Code to determine the facts of the crime that took place and to apprehend the persons guilty of committing the crime ...”

Article 22. Victims' right to take part in criminal prosecutions

“The victim, his legal guardian and/or designated representative shall have the right to take part in the criminal prosecution of the accused ...”

61. Articles 124 and 125 of the Code provide as follows:

Article 124. Examination of complaints by a prosecutor or head of an investigating body

“1. A prosecutor or head of an investigating body shall examine a complaint within ... ten days of its receipt ...”

Article 125. Judicial examination of complaints

“1. Decisions of an investigator or prosecutor to refuse to initiate a criminal investigation ... or any other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens’ access to justice, may be appealed against to a district court, which is empowered to examine the legality and grounds of the impugned decisions ...

3. The court shall examine the legality and the grounds of the impugned decisions or acts ... within five days of receipt of the complaint ...

5. Following examination of the complaint, the court shall deliver one of the following decisions:

(1) Declaring the decisions, acts or omissions of the official unlawful or unsubstantiated and obliging the official to eliminate any defects;

(2) Not allowing the applicant’s complaint ...”

62. Articles 140,141 and 144 of the Code provide as follows:

Article 140. Grounds and bases for initiating a criminal case

“1. The following shall serve as grounds for initiating a criminal case:

a) a complaint of a crime ...”

Article 141. Criminal complaint

“1. A criminal complaint may be submitted in oral or written form.”

Article 144. Procedure for reviewing a report of a crime

“1. An inquiry officer, inquiry agency, investigator, or prosecutor must accept and investigate every report of a crime ... and shall make a decision on that report ... no later than three days after the filing of the report ...

3. A prosecutor, head of an investigation unit or head of an inquiry agency ... may extend the time period specified by (1) of this Article to up to ten days ...

5. Any refusal to accept a report of a crime may be appealed against to the prosecutor or to a court in accordance with the procedures established by Articles 124 and 125 of this Code ...

63. Articles 157 and 159 of the Code provide as follows:

Article 157. Urgent investigative actions

“1. When there is evidence of a crime for which a preliminary investigation is required, an inquiry agency shall initiate a criminal case and take urgent investigative actions ...”

Article 159. Mandatory review of official requests submitted

“1. An investigator or inquiry officer shall be obliged to review every official request filed in a criminal case ...

2. Under this requirement ... a victim ... or their representatives may not be denied the opportunity to question witnesses or to have a forensic expert analysis or other investigative actions conducted ...”

D. Russian Civil Code

64. Chapter 59 of the Code provides that pecuniary and non-pecuniary damage caused, amongst other things, by unlawful actions of State officials should be compensated for in full.

III. INTERNATIONAL AND DOMESTIC REPORTS ON DISAPPEARANCES IN CHECHNYA AND INGUSHETIA

A. Reports by international inter-governmental and non-governmental organisations

1. Council of Europe Committee of Ministers Documents

65. According to document CM/Inf/DH(2010)26E of 27 May 2010 entitled “Action of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights”, a special unit has been set up within the Investigating Committee in Chechnya to address the issues raised in the Court’s judgments. An information document submitted by the Russian Government in March 2011 (DH-DD(2011)130E) stated that of 136 cases discussed (concerning the “*Khashiyev* group” involving findings of violations of core rights in the Northern Caucasus), only two criminal cases have been concluded (one of which was terminated as a result of the suspect’s death). The remainder were pending; most of them have been suspended for failure to identify the suspects.

66. The relevant part of Interim Resolution CM/ResDH(2011)292 of 2 December 2011 on “Execution of the judgments of the European Court of Human Rights in 154 cases against the Russian Federation concerning

actions of the security forces in the Chechen Republic of the Russian Federation” stated:

“1. General framework for domestic investigations carried out in cases which gave rise to a judgment of the Court or to an application before the Court

Considering the important changes introduced after the events described in the Court’s judgments in the general framework governing domestic investigations and in particular those conducted in cases which gave rise to a judgment of the Court or an application before the Court; ...

Noting with interest the efforts reported by the Russian authorities with a view to remedying the shortcomings of the initial investigations, establishing the facts as well as the identities of those responsible, including servicemen and other representatives of federal forces who might have been involved in the events described in the judgments; ...

Noting however with concern that despite the efforts made by the Investigative Committee and by other competent authorities, more than six years after the first judgments of the Court, in the vast majority of cases, it has not yet been possible to achieve conclusive results and to identify and to ensure the accountability of those responsible, even in cases where key elements have been established with sufficient clarity in the course of domestic investigations, including evidence implicating particular servicemen or military units in the events;

Underlining therefore the need to ensure that the investigating authorities make full and effective use of all means and powers at their disposal as well as to reflect on whether any other additional measures are still required, bearing in mind the difficulties inherent in investigations conducted into the consequences of a large-scale antiterrorist operation such as that at issue;

Stressing in addition that the necessary action in this respect should be taken as a matter of priority since with the passage of time, the risk of loss of evidence increases and even if they are eventually identified, the prosecution of those responsible may become impossible given the expiry of the time-limits in the statutes of limitation ...

URGES the Russian authorities to enhance their efforts so that independent and thorough investigations into all abuses found in the Court’s judgments are conducted, in particular by ensuring that the investigating authorities use all means and powers at their disposal to the fullest extent possible and by guaranteeing effective and unconditional co-operation of all law-enforcement and military bodies in such investigations;

STRONGLY URGES the Russian authorities to take rapidly the necessary measures aimed at intensifying the search for disappeared persons;

ENCOURAGES the Russian authorities to continue their efforts to secure participation of victims in investigations and at increasing the effectiveness of the remedies available to them under the domestic legislation; ...”

2. Reports by other Council of Europe bodies

67. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued three public statements in relation to Chechnya between 2001 and 2007, deploring the absence of cooperation in the investigation of the alleged violations. The public statement of 13 March 2007 conceded that “the abductions (forced disappearances) and the related problem of unlawful detention ... continue to constitute a troubling phenomenon in the Chechen Republic”. In January 2013 the CPT, for the first time, published a report to the Russian Government drawn up after its visit to the North Caucasian region of the Russian Federation from 27 April to 6 May 2011. The report focussed on the allegations of ill-treatment and reported allegations of unrecorded detentions and detentions in unlawful locations. It raised the problems of impunity of the law-enforcement personnel for such crimes and recommended to implement measures aimed at safeguarding the interests of the detainees as of first moments of detention, including proper record-keeping of detention, notification of relatives, access to a lawyer and to medical council, providing full information about their rights.

68. On 4 June 2010 the PACE Committee on Legal Affairs and Human Rights presented a report entitled “Legal remedies for human rights violations in the North-Caucasus Region”. On the basis of that report, on 22 June 2010 PACE adopted Resolution no. 1738 and Recommendation no. 1922 deploring the absence of an effective investigation and prosecution of serious human rights violation in the region, including disappearances. They found that “the suffering of the close relatives of thousands of missing persons in the region and their inability to get over their grief constitute a major obstacle to true reconciliation and lasting peace.” Among other measures, the Resolution called on the Russian authorities to:

“13.1.2. bring to trial in accordance with the law all culprits of human rights violations, including members of the security forces, and to clear up the many crimes which have gone unpunished ...;

13.1.3. intensify co-operation with the Council of Europe in enforcing the judgments of the European Court of Human Rights, especially where they concern reinforcement of the individual measures to clear up the cases of, in particular, abduction, murder and torture in which the Court has ascertained a lack of proper investigation;

13.1.4. be guided by the example of other countries which have had to contend with terrorism, particularly as regards the implementation of measures conducive to the suspects’ co-operation with justice in dismantling the terrorist networks and the criminal entities that exist within the security forces, and to prevent further acts of violence; ...

13.2. both Chambers of the Russian Parliament to devote their utmost attention to the situation in the North Caucasus and to demand exhaustive explanations of the

executive and judicial authorities concerning the malfunctions observed in the region and mentioned in this resolution, and to stipulate that the necessary measures be applied.”

In Recommendation no. 1922, PACE advised the Committee of Ministers to:

“2.1. pay the utmost attention to the development of the human rights situation in the North Caucasus;

2.2. in enforcing the judgments of the European Court of Human Rights (the Court) concerning this region, emphasise the prompt and complete elucidation of the cases in which the Court has ascertained an absence of effective investigation; ...”

69. In Resolution 1787 (2011) entitled “Implementation of judgments of the European Court of Human Rights”, PACE considered deaths and ill-treatment by law-enforcement officials and a lack of effective investigation thereof in Russia as one of the four “major systemic deficiencies which cause a large number of repetitive findings of violations of the Convention and which seriously undermine the rule of law in the states concerned”.

70. A report dated 6 September 2011 by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Russian Federation from 12 to 21 May 2011, found a number of positive developments aiming to improve daily life in the republics visited. Despite those positive steps, the Commissioner defined as some of the most serious issues counter-terrorism measures, abductions, disappearances and ill-treatment, combatting impunity and the situation of human rights defenders. The report included the Commissioner’s observations and recommendations in relation to those topics.

71. In particular, the Commissioner was deeply concerned by the persistence of allegations and other information relating to abductions, disappearances and ill-treatment of people deprived of their liberty in the Northern Caucasus. While the number of abductions and disappearances in Chechnya might have decreased recently compared with 2009, the situation remained far from normal. Referring to the far-reaching effects of disappearances on a society as a whole, he supported the proposal of the Presidential Council for Civil Society Institutions and Human Rights to create an interdepartmental federal commission to determine the fate of individuals who had gone missing during the entire period of counter-terrorism operations in the Northern Caucasus. The Commissioner further emphasised the importance of systematic application of rules prohibiting the wearing of masks or non-standard uniforms without badges, as well as the use of unmarked vehicles in the course of investigative activities.

72. The Commissioner went on to state that the persistent patterns of impunity for serious human rights violations were among the most intractable problems and remained a source of major concern to him. There

had certainly been a number of positive steps, such as the establishment of Investigating Committee structures, increased support for victim participation in criminal proceedings, and the promulgation of various directives regarding the conduct of investigations. Despite those measures of a systemic, legislative and regulatory nature, the information gathered during the visit had led the Commissioner to conclude that the situation had remained essentially unchanged in practice since his previous visit in September 2009. He called on the Russian leadership to help in creating the requisite determination on the part of the investigators concerned by delivering the unequivocal message that impunity would no longer be tolerated.

3. NGO Reports

73. In September 2009 Human Rights Watch (HRW) issued a report entitled ‘Who Will Tell Me What Happened to My Son? Russia’s Implementation of European Court of Human Rights Judgments on Chechnya’, which was strongly critical of the absence of progress in the investigations in disappearance cases.

74. On 20 April 2011 HRW and two Russian NGOs, the Committee Against Torture and Memorial, published a joint open letter to the Russian President. They spoke of a “complete failure of the Chechen Republic investigating authorities to deal with abductions of Chechnya residents by local law-enforcement and security agencies”, of “systematic sabotage of investigations by Chechen law-enforcement agencies and the inability of the Investigating Committee to fulfil its direct mandate to investigate crimes”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

75. The applicant complained that the right to life of her son had been violated, and that the authorities had failed to investigate this complaint, contrary to the requirements of Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

76. The Government contested that argument. They stressed that the investigation was still pending and that no information about the death of Sayd-Salekh Ibragimov had been obtained. In these circumstances, the complaint should be dismissed as manifestly ill-founded.

A. Admissibility

77. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. In so far as the Government’s objection that the investigation is still pending appears to raise issues concerning the effectiveness of the investigation, the Court finds that they are closely linked to the substance of the complaints and should be joined to the merits of the case. It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged violation of the substantive aspect of the right to life

(a) The parties’ submissions

78. The applicant’s complaint under the substantive aspect of Article 2 was twofold. First, she argued that her son was killed by State agents, in breach of Article 2. She stated that he was last seen at the headquarters of the external guards regiment on the night of 21 to 22 October 2009. He was suspected of a serious crime, that of aiding and abetting members of illegal armed groups who had killed and wounded police officers. He was frightened and displayed signs of ill-treatment. Senior members of the police force expressed unambiguous threats to kill him in retribution for the casualties sustained by the regiment, unless he cooperated with them. His detention or questioning were not recorded. No one has seen Sayd-Salekh since that date; there is no information about his fate or whereabouts. The Government have been unable to provide any explanation as to what happened to him subsequently. He must therefore be presumed killed by the same persons who detained him on 21 October 2009.

79. Second, the applicant argued that the Russian Federation failed in their positive obligations under Article 2 to protect the life of Sayd-Salekh Ibragimov. The applicant indicated a number of serious shortcomings of

both a general and a specific nature, which led to the possibility of her son “disappearing” after detention. Despite a large number of “disappearances” occurring in Chechnya in the past years, the authorities had failed to create a system which could prevent such incidents and respond quickly to them when they occurred. Thus, the applicant emphasised that the responsibility for special operations during which persons could be detained was not clear, especially *vis-à-vis* the local law-enforcement authorities. The list of personnel who took part in such operations was not available, and was sought by the investigation months after the operation had taken place. The investigating authorities were unable to ensure the cooperation of the commanding officers, as illustrated by the documents relating to Mr Delimkhanov. No disciplinary or other measures were taken against senior law-enforcement personnel in charge of operations which resulted in disappearances, nor in respect of the senior prosecutors and investigators for failing to take timely steps to combat and investigate them. This resulted in impunity for both perpetrators and officials from the investigating agencies. Finally, the applicant considered that if a fast and comprehensive investigation had been carried out upon her application, her son might have been saved from “disappearing”.

80. The Government’s position was limited to pointing that no verifiable information about Sayd-Salekh’s death had been obtained so far.

(b) The Court’s assessment

(i) Whether Sayd-Salekh Ibragimov may be presumed dead, and the establishing of responsibility for his presumed death

81. The Court observes that in its extensive jurisprudence it has developed a number of general principles relating to the establishment of matters in dispute, in particular when faced with allegations of violations of fundamental rights (for a most recent summary of these, see *El Masri v. “the former Yugoslav Republic of Macedonia”* [GC], no. 39630/09, §§ 151-53, 13 December 2012).

82. Turning to the circumstances of the present case, the Court finds it sufficiently established, on the basis of the parties’ submissions and the documents submitted to it, that at around midnight on 21 October 2009 Sayd-Salekh Ibragimov was taken by servicemen of the external guards regiment to the regiment’s headquarters in Grozny (see, for example, paragraphs 42-44 and 50 above). Two of his relatives, Adnan I. and Magomed I., were also taken to the regiment’s headquarters and saw him there. Sayd-Salekh Ibragimov’s detention was based on the suspicion that he had committed a criminal offence, namely that of aiding an alleged member of a criminal group, although no formal charges were laid against him. During his detention he was questioned by police officers, presumably about his suspected criminal activity. However, no formal records were

drawn up in relation to his detention or questioning. His uncle and cousin witnessed Sayd-Salekh Ibragimov bearing clear signs of ill-treatment, frightened and totally controlled by his captors. They were given to understand that his life depended on the extent of his “cooperation” with the officers, who considered him responsible for the death and injuries of their colleagues. Although some officers of the oil regiment alleged that he had been released, together with his two relatives, he has not been seen since, and his family have had no news of him. Adnan I and Magomed I. firmly denied that he was released with them, both to the Court and to the domestic investigation (see paragraphs 16, 17, 24 and 36 above). The investigation did not acquire any evidence of his alleged release. There is no plausible explanation as to what happened to him after his detention.

83. The Court reiterates that in situations such as the one at hand, where it is possible to establish that a person entered a place under the authorities’ control and has not been seen since, the onus is on the Government to provide a plausible and satisfactory explanation as to what happened at that place, and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII, and *Magomadov v. Russia*, no. 68004/01, § 97, 12 July 2007). The Government referred to the unfinished nature of the criminal investigation and to the lack of evidence of the applicant’s son’s death. However, the Court considers that the fact that the investigation has failed to progress beyond establishment of the basic facts communicated by the applicant is not detrimental to her argument that the State is responsible for Sayd-Salekh Ibragimov’s detention. It finds that the Government have failed to provide a plausible explanation of Sayd-Salekh Ibragimov’s fate following his detention at the external guards regiment headquarters, or to show convincingly that he has been released.

84. It remains to be seen whether, as the applicant submits, Sayd-Salekh Ibragimov can be presumed dead following his unacknowledged detention. The Court reiterates that the presumption of death is not automatic and is only reached on examination of the circumstances of the case, in which the lapse of time since the person was last seen alive or heard from is a relevant element (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 143, ECHR 2009).

85. In a number of cases concerning disappearance in Russia’s Northern Caucasus the Court has held that when a person is detained by unidentified State agents without any subsequent acknowledgement of the detention, this can be regarded as life-threatening. Those considerations were reiterated in situations where, as in the present case, individuals disappeared from places and buildings which were under the authorities’ full control (see, for example, *Yusupova and Zaurbekov v. Russia*, no. 22057/02, § 55, 9 October

2008; *Magomadov*, cited above, § 98; *Asadulayeva and Others v. Russia*, no. 15569/06, § 94, 17 September 2009; and *Matayeva and Dadayeva v. Russia*, no. 49076/06, § 85, 19 April 2011). The Court notes the presence in the case at hand of the same elements which have previously led it to consider the detention life-threatening. Moreover, this is a rare example in which witnesses were able to report explicit threats to the life of the person concerned.

86. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead (see *Tanış and Others*, cited above, § 201). In the context of the disappearances in the Northern Caucasus the Court has made presumptions of death in the absence of any reliable news of disappeared persons for periods ranging from four and a half years (see *Imakayeva v. Russia*, no. 7615/02, § 155, ECHR 2006-XIII (extracts), and *Medova v. Russia*, no. 25385/04, § 90, 15 January 2009) to over ten years.

87. At the time of the judgment in the present case, over three years had passed without any news of Sayd-Salekh Ibragimov. In view of many similar findings in the past, the Court reiterates that there is a life-threatening context to unacknowledged detention in this region. It is precisely this context which is most relevant to the decision of whether or not the person may be presumed dead. In such circumstances it would be artificial to impose a particular time-limit for a claim under Article 2 to be considered; while all elements of the case should be taken into account, there is enough evidence to suggest that the victims of disappearances often do not survive for very long after the abductions (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, § 83, ECHR 2006-XIII (extracts); *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, §§ 91-92, 10 May 2007; and *Dzhabrailovy v. Russia*, no. 3678/06, § 65, 20 May 2010).

88. In view of the above considerations, the Court presumes Sayd-Salekh Ibragimov to be dead. Consequently, the responsibility of the respondent State is engaged. Noting that the authorities have not relied on any exceptions to the right to life listed in Article 2 § 2, it follows that liability for his presumed death is attributable to the Government. There has been, accordingly, a violation of Article 2 of the Convention in this respect.

(ii) *Alleged failure to take measures to protect against a risk to life*

89. The Court will further consider the applicant's allegation that the State has failed in its positive obligations to protect her son's life.

90. It is clear that Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to

safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, Reports 1998-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II). The State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 of the Convention may also imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, Reports 1998-VIII).

91. The Court reiterates that the scope of any positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116; *Paul and Audrey Edwards*, cited above, § 55; *Medova*, cited above § 96; *Rantsev v. Cyprus and Russia*, no. 25965/04, § 222, ECHR 2010- ... (extracts); and *Tsechoyev v. Russia*, no. 39358/05, § 136, 15 March 2011).

92. Accordingly, in the present case the Court must consider whether at the relevant time the authorities could have foreseen that Sayd-Salekh Ibragimov's life was at real and immediate risk, and whether they had taken measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

93. First, the Court reiterates that kidnapping and unlawful deprivation of liberty constitute serious crimes in Russian law (see paragraph 59 above). The Court further finds that the problem of enforced disappearances and its life-threatening implications for detained individuals must be known to the law-enforcement authorities of the region, in view of its magnitude and relatively constrained territorial scope. In fact, as it appears from the information summarised above (see paragraphs 65-74 above), the Russian authorities were sufficiently aware of it, and had lately taken a number of specific actions to render investigations of this type of crime more efficient, *inter alia*, by creating a special unit within the Investigating Committee of

the Chechen Republic. The Court also takes note of the above finding as to the life-threatening context of the prevalent unacknowledged detention in this region, as attested to by numerous previous judgments (see paragraphs 66 and 87 above).

94. Next, the Court finds that in the aftermath of the events of 21 October 2009 the applicant brought her son's situation to the authorities' attention. Thus, on 1 November 2009 she and her relative informed the district prosecutor's office in Achkhoy-Martan about the absence of news of her son after he was apprehended. However, it appears that at that stage their complaints were not noted or pursued (see paragraph 20 above). Next, on 2 December 2009 the applicant lodged a written complaint with the district investigating committee in Achkhoy-Martan (see paragraph 22 above). Some days later the investigator obtained additional evidence that on 21 October 2009 Sayd-Salekh Ibragimov had been seen under the control of his captors and showed clear signs of ill-treatment, that he had been threatened, and that he had not been seen since that time (see paragraphs 24-26 and 30 above). At the same time, it became clear that no official records of his detention or questioning had been made.

95. In view of the above, the Court concludes that no later than 2 December 2009 the relevant authorities were aware that Sayd-Salekh Ibragimov had become the victim of unlawful deprivation of liberty in a life-threatening situation.

96. The Court will next examine whether the State has taken operative measures to protect the right to life of the disappeared person, as required by the positive obligation inherent in Article 2 of the Convention (see *Koku v. Turkey*, no. 27305/95, § 132, 31 May 2005; *Osmanoğlu v. Turkey*, no. 48804/99, § 72, 24 January 2008; and *Medova*, cited above, § 99).

97. In this context, upon receipt of plausible information pointing to real and immediate danger to a person's life this obligation requires an urgent and appropriate reaction by law-enforcement bodies. The measures to be taken could have included immediate inspection of the premises; employment of expert methods aimed at collecting individual traces that could have been left by the missing person's presence or ill-treatment; identification and questioning of the servicemen involved; and collection of other perishable traces, such as the CCTV records. These measures should have been taken as soon as the authorities have become aware of the life-threatening situation in which the person had last been seen.

98. However, no such measures were taken with the aim of saving Sayd-Salekh Ibragimov's life. In the days following the applicant's complaint, the investigator contented himself with collecting some statements and exchanging requests for information with a range of institutions, including health and educational facilities. This was clearly an inadequate response to a well-founded submission about a crime so serious and so widespread in the region.

99. The Court is unable to speculate about the exact date of Sayd-Salekh's presumed death. However, as noted above, the more time goes by, the less chances there are that the abducted person is still alive. This is true for any criminal abduction and disappearance, but is especially so in the context of relatively widespread unresolved disappearances, as in the Chechen Republic. An effective and rapid response by the authorities is absolutely vital in such circumstances, and one could reasonably expect that in view of numerous previous similar crimes in the region an adequate system would have been set up by the time of the events in question. However, it appears that this was not the case. The Court finds particularly regrettable the absence of any operative response in the present case, where the authorities were apprised not only of unacknowledged detention, but of its exact location and the identities of those who had carried it out. It is difficult to reconcile their more than lenient attitude with the apparent gravity of the threat to the identified person's life and with the obligation to protect it from unlawful threats.

100. The Court has already found that negligence displayed by the investigating or supervising authorities in the face of real and imminent threats to an identified individual's life emanating from State agents, such as police, who were acting clearly outside their legal duties, might entail a violation of the positive obligation to protect life (see *Gongadze v. Ukraine*, no. 34056/02, § 170, ECHR 2005-XI). Turning to the present case, the Court confirms that the fact that the suspected perpetrators were 'police officers does not relieve the competent investigating and supervising authorities – the prosecutor's office and the investigative committee – of this obligation.

101. Accordingly, the Court cannot but conclude that, by their failure to act rapidly and decisively, the authorities involved had not taken operative measures within the scope of their powers which, judged reasonably, might have been expected to avoid risking the missing man's life.

102. There has accordingly been a violation of Article 2 of the Convention also on account of the failure to protect Sayd-Salekh Ibragimov's life.

2. The alleged inadequacy of the investigation

103. The applicant argued that the respondent State has also failed in its procedural obligation to investigate her son's presumed death. The Government disputed this allegation.

104. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an

investigation to comply with the Convention's requirements (for a recent summary, see *Rantsev*, cited above, §§ 232-33).

105. The Court notes that the investigation has failed to comply with the requirement of promptness, having delayed for weeks and months the taking of the most essential steps. Most incomprehensibly, the Court notes that despite the evidence corroborating the applicant's statements, on 17 December 2009 the investigator ruled not to open a criminal investigation, giving the reason of lack of evidence of a crime (see paragraph 31 above). It appears from the documents contained in the investigation file that statements of police officers of the regiment were taken only on 18 December 2009 (see paragraph 44 above), that is after the decision had been taken not to open criminal proceedings. Although the investigation was formally opened on 28 December 2009, it was not until February 2010 that the applicant was accorded victim status and other witnesses were questioned (see paragraphs 34-35 above), and it was not until June 2010 that the two officers directly identified by Adnan I. were questioned (see paragraphs 42 and 43 above).

106. The transfer of the investigation between different branches of the law-enforcement authorities (see paragraphs 22 and 32 above) contributed to the delays, since one would expect that the report of a crime so serious would be immediately entrusted to the competent office. These delays resulted in the inevitable loss of perishable evidence, such as the victim's and the perpetrators' individual imprints and, in the present case, the records of the CCTV camera (see paragraph 38 above). In view of the importance of such evidence in a case concerning unlawful abduction in life-threatening circumstances and subsequent disappearance, this aspect alone could have justified the findings of a violation of a procedural breach of Article 2.

107. The delays in questioning of the potential perpetrators of the crime present another serious challenge to the effectiveness of the investigation. In the past, the Court has found a violation where no appropriate steps were taken to reduce the risk of collusion among the officers potentially involved in a crime, which amounted to a significant shortcoming in the adequacy of the investigation (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-VI). In the present case, several months passed before the key persons identified by the witnesses were questioned, greatly increasing the risk of such collusion.

108. The Court notes yet other aspects of the investigation which call its effectiveness into question. In particular, the Court is struck by the apparent reluctance of the investigating authorities to establish the circumstances and legal grounds of Sayd-Salekh Ibragimov's delivery to the regiment where he was last seen alive, of his questioning there and alleged release. The statements of the regiment's officers in this respect are contradictory among them and with the other evidence collected by the investigation (see paragraphs 42-44 above). This was apparent at least to some members of the

investigating team, who tried to obtain more cooperation from the senior officials allegedly implicated in the crime, including Mr Delimkhanov. It appears that these attempts were thwarted, and that the investigator terminated his work at the Investigating Committee within days of submitting a report about the lack of cooperation on behalf of the police (see paragraphs 45-46 above).

109. Next, the Court notes that despite a plausible complaint about the involvement of senior officers of the police force in a serious crime, nothing in the documents reviewed by it suggests that special steps were taken in order to ensure the investigation's independence and objectivity in all circumstances and regardless of whether those involved were public figures (see *Kolevi v. Bulgaria*, no. 1108/02, § 208, 5 November 2009). Thus, it does not appear that the investigation has had any impact on their continued service and their, at least potential, ability to put pressure upon the witnesses, victim and even the investigator. The Court notes with particular concern the allegations of threats made to Adnan I., of which he had informed the investigator, and other relevant complaints (see paragraphs 37, 53-55 above). Given high rank and influence of the persons in question, the requirement of independent investigation in the present case commanded going beyond merely relying upon institutional independence between the Ministry of the Interior and the Investigating Committee and called for measures designed to remove the persons potentially implicated in the crime from power, even indirect, over the other actors of the investigation. The Court recalls in this respect that the requirement of independent investigation includes not only a lack of hierarchical or institutional connection but also a practical independence. What is at stake here is nothing less than public confidence in the State's monopoly on the use of force (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 300, ECHR 2011 (extracts), with further references).

110. These aspects lead the Court to conclude that the investigation has been ultimately ineffective (see *Kolevi*, cited above, § 201, and *Tsechoyev*, cited above, § 153).

111. The Court has joined the Government's preliminary objection of non-exhaustion in respect of a criminal investigation to the merits of the complaint. In view of the above, it concludes that this objection should be dismissed, since the remedy relied on by the Government was ineffective in the circumstances.

112. The Court concludes therefore that there has also been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 5 OF THE CONVENTION ON ACCOUNT OF UNLAWFUL DETENTION AND DISAPPEARANCE OF THE APPLICANT'S SON

113. The applicant complained of a violation of Articles 3 and 5 of the Convention, as a result of the mental suffering caused to her by the disappearance of her son and the unlawfulness of detention. Articles 3 and 5 read, in so far as relevant:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 5

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

114. The Government contested these arguments.

115. The Court notes that the complaint is linked to those examined above under Article 2 and must therefore likewise be declared admissible.

116. The Court has found on many occasions that a situation of enforced disappearance gives rise to a violation of Article 3 in respect of close relatives of the victim. The essence of such a violation does not lie mainly in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to

their attention (see *Orhan v. Turkey*, no. 25656/94, § 358, 18 June 2002, and *Imakayeva*, cited above, § 164).

117. Equally, the Court has found on several occasions that unacknowledged detention is a complete negation of the guarantees contained in Article 5 and discloses a particularly grave violation of its provisions (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev*, cited above, § 122). The applicant's son detention was likewise conducted "outside the normal legal system" and, "by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention" (see, *mutatis mutandis*, *Babar Ahmad and Others v. the United Kingdom* (dec.) nos. 24027/07, 11949/08 and 36742/08, §§ 113-14, 6 July 2010, and *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 239, ECHR 2012).

118. The Court reiterates its findings regarding the State's responsibility for the abduction and its failure to carry out a meaningful investigation of the fate of Sayd-Salekh Ibragimov. It finds that the applicant, who is the mother of the disappeared man, must be considered a victim of a violation of Article 3 of the Convention, on account of the distress and anguish which she has suffered, and continues to suffer, as a result of her inability to ascertain his fate and of the manner in which her complaints have been dealt with.

119. The Court furthermore confirms that since it has been established that Sayd-Salekh Ibragimov was detained by State agents, apparently without any legal grounds or acknowledgement of such detention, this constitutes a particularly grave violation of the right to liberty and security of persons enshrined in Article 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

120. The applicant complained of a violation of Article 13 in connection with Article 2, which reads:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

121. The Government contested that argument.

122. The Court notes that the complaint is likewise linked to those examined above under Article 2 and must therefore be declared admissible.

123. The Court reiterates that in circumstances where, as here, a criminal investigation of a disappearance has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see

Khashiyev and Akayeva v. Russia, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

124. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

126. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

127. The Government found this claim excessive.

128. The Court awards the applicant EUR 60,000 in respect of non-pecuniary damage.

B. Costs and expenses

129. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to legal representation amounted to 3,232 pounds sterling (GBP). She submitted a breakdown of costs and supporting documents, including fee notes, translator’s invoices and a claim for administrative and postal costs. She requested that the payment be transferred directly to the representative’s bank account in the UK.

130. The Government disputed the reasonableness of the claim, pointing to the unnecessary increase in expenses when the representation is performed by a foreign organisation. They asked the Court to reject the claims under this heading.

131. The Court has to establish first whether the costs and expenses indicated by the applicant’s representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV). Bearing the above principles in mind, the Court awards the applicant the amount of EUR 3,000 together with any tax that may be chargeable to her, the net award to be paid into the representative’s bank account, as identified by the applicant.

C. Default interest

132. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the issue of exhaustion of criminal domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of Sayd-Salekh Ibragimov's presumed death;
4. *Holds* that there has been a violation of Article 2 of the Convention on account of the State's failure to comply with its positive obligation to protect the life of Sayd-Salekh Ibragimov;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances in which Sayd-Salekh Ibragimov disappeared;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant;
7. *Holds* that there has been a violation of Article 5 of the Convention on account of Sayd-Salekh Ibragimov's unlawful detention;
8. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2;
9. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement, save in the case of the payment for costs and expenses:
 - (i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the net

award to be paid into the representative's bank account, as identified by the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President